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Inspector. Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

Moved (movement, move). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Protected area. Those States or counties designated in § 301.38-3(c) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* species, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,² and that are listed as rust-resistant under § 301.38-2 (a)(2) and (a)(3).

Rust-susceptible plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* species not listed as rust-resistant under § 301.38-2 (a)(2) and (a)(3).

²Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, i.e., a known rust-susceptible variety of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

Regulated article. Any article listed in § 301.38-2 (a)(1) through (a)(4) of this subpart or otherwise designated as a regulated article in accordance with § 301.38-2(a)(5) of this subpart.

Seedling. Any plant of the genera *Berberis*, *Mahoberberis*, and *Mahonia* grown from seed and having less than 2 years' growth.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

Two years' growth. The growth of a plant during all growing seasons of 2 successive calendar years.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989; 67 FR 8178, Feb. 22, 2002]

§ 301.38-2 Regulated articles.

(a) The following are regulated articles:³

(1) All seedlings and plants of less than 2 years' growth of the genus *Berberis*.

(2) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species.

B. aggregata x *B. wilsoniae* 'Pirate King'
B. 'Amstelveen'
B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. candidula 'Amstelveen'
B. candidula x *B. verruculosa*
B. 'Amstelveen'
B. cavallieri
B. chenaulti
B. chanaulti 'Apricot Queen'
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepainii

³Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.

B. gagnepaini 'Chenault'
B. gilgiana
B. gladwynensis
B. gladwynensis 'William Penn'
B. gyalica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. integerrima 'Wallichs Purple'
B. julianae
B. julianae 'Nana'
B. julianae 'Spring Glory'
B. koreana
B. koreana × *B. thunbergii* hybrid
 Bailsel
B. koreana × *B. thunbergii* hybrid Tara
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. 'Orange King'
B. lologensis
B. lologensis 'Mystery Fire'
B. manipurana
B. media 'Park Jewel'
B. media 'Red Jewel'
B. mentorensis
B. pallens
B. poiretii 'BJG 073', 'MTA'
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. soulieana 'Claret Cascade'
B. stenophylla
B. stenophylla diversifolia
B. stenophylla gracilis
B. stenophylla irwini
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii 'Antares'
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
 Marshalli
B. thunbergii atropurpurea 'Golden
 Ring'
B. thunbergii atropurpurea 'Inter-
 media'
B. thunbergii atropurpurea 'Knight
 Burgundy'
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea 'Redbird'
B. thunbergii atropurpurea 'Rose
 Glow'
B. thunbergii aurea
B. thunbergii 'Aurea Nana'
B. thunbergii 'Bagatelle'
B. thunbergii 'Bailgreen' (Jade Car-
 ousel™)
B. thunbergii 'Bailone'
B. thunbergii 'Bailone' (Ruby Car-
 ousel®)
B. thunbergii 'Bailtwo'
B. thunbergii 'Bailtwo' (Burgundy
 Carousel®)
B. thunbergii 'Bonanza Gold'
B. thunbergii 'Concorde'
B. thunbergii 'Crimson Pygmy'
B. thunbergii 'Criruzam' Crimson
 Ruby™
B. thunbergii 'Dwarf Jewell'
B. thunbergii erecta
B. thunbergii 'globe'
B. thunbergii 'golden'
B. thunbergii 'Golden Pygmy'
B. thunbergii 'Green Carpet'
B. thunbergii 'Harlequin'
B. thunbergii 'Helmond Pillar'
B. thunbergii 'Kobold'
B. thunbergii 'Lime Glow'
B. thunbergii 'Lustre Green'
B. thunbergii maximowiczii
B. thunbergii 'Midruzam' Midnight
 Ruby™
B. thunbergii minor
B. thunbergii 'Monlers'
B. thunbergii 'Monomb'
B. thunbergii 'Monry'
B. thunbergii 'Painter's Palette'
B. thunbergii 'Pink Queen'
B. thunbergii pluriflora
B. thunbergii 'Royal Burgundy'
B. thunbergii 'Royal Cloak'
B. thunbergii 'Sparkle'
B. thunbergii 'Thornless'
B. thunbergii 'Upright Jewell'
B. thunbergii variegata
B. thunbergii xanthocarpa
B. thunbergii × 'Bailsel' (Golden Car-
 ousel®)
B. thunbergii × 'Tara' (Emerald Car-
 ousel®)
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon
B. × carminea 'Pirate King'
B. × frikartii 'Amstelveen'
 (3) All plants, seedlings, seeds, fruits,
 and other plant parts capable of propa-
 gation from the following rust-resist-
 ant *Mahoberberis* and *Mahonia* species,

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except *Mahonia* cuttings for decorative purposes:

(i) Genus *Mahoberberis*:

M. aquicandidula

M. aquifolium 'Smaragd'

M. aquisargentiae

M. miethkeana

M.×*'Magic'*

(ii) Genus *Mahonia*:

M. amplexans

M. aquifolium

M. aquifolium atropurpurea

M. aquifolium compacta

M. aquifolium compacta 'John Muir'

M. aquifolium 'Donewell'

M. aquifolium 'Kings Ransom'

M. aquifolium 'Orangee Flame'

M. aquifolium 'Undulata'

M. aquifolium 'Winter Sun'

M. 'Arthur Menzies'

M. bealei

M. dictyota

M. fortunei

M. 'Golden Abundance'

M. japonica

M. japonica×*M. lomariifolia* 'Charity'

M. lomariifolia

M. nervosa

M. pinnata

M. pinnata 'Ken Hartman'

M. piperiana

M. pumila

M. repens

M.×*media* 'Charity'

M.×*media* 'Winter Sun'

(4) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and seedlings from rust-susceptible species and varieties of the genera *Mahoberberis* and *Mahonia*, except *Mahonia* cuttings for decorative purposes.

(5) Any other product or article not listed in paragraphs (a)(1) through (a)(4) of this section that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(b) A person may request that an additional rust-resistant variety be added to paragraph (a)(2) or (a)(3) of this section. The person requesting that a rust-resistant variety be added to paragraph (a)(2) or (a)(3) of this section must provide APHIS with a description

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of the variety, including a written description and color pictures that can be used by an inspector to clearly identify the variety and distinguish it from other varieties.

(Approved by the Office of Management and Budget under control number 0579-0186)

[67 FR 8179, Feb. 22, 2002]

§ 301.38-3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (c) of this section any State that has eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5, and maintain and enforce an inspection program under which every plant nursery within the State is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(b) The Administrator may designate as a protected area any county within a State, rather than the entire State, if areas within the State have eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State program, and;

(1) The State employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5;

(2) The State is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The State maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that